Appendix C: Results from the Law Enforcement Focus Group Session and the Legal Focus Group Session in September, 2002

Law Enforcement Focus Group
September 4, 2002
State Patrol District 4 Headquarters
Fond du Lac, Wisconsin

THEMES, ISSUES, OPINIONS AND PERCEPTIONS

The following narrative summarizes the themes, issues, opinions and perceptions of the Law Enforcement Focus Group session conducted on September 4, 2002. This discussion focused on the use of passive alcohol sensor devices in traffic enforcement. Members of the focus group were selected on the basis of their prior use or knowledge and/or interest in possible uses of the devices, or as a representative of varying types of Wisconsin law enforcement agencies. All participants were asked a series of questions pertaining to the concept of the devices, their accuracy, effectiveness in combating OWI violations, and their practicality for law enforcement use, as well as legal questions pertaining to their use. The survey questions and a list of the participants can be found following these statements.

It is important to stress that no attempt was made to achieve a consensus on the questions or to "take a vote" to determine majority opinion. The responses listed below represent the observations, experiences, and opinions of the participants.

NOTE: Four of the nine law enforcement agencies represented at the focus session indicated that they either are currently using, or have used a passive alcohol sensor in the past.

Appropriate / Inappropriate Uses of Passive Alcohol Sensors

- *Just one of many tools available in the law enforcement "tool box."*
- *Officer still is obligated to perform all duties and procedures related to an OWI traffic stop regardless of use of the device.*
- *Does not replace the law enforcement officer's own capabilities.*
- *The officer's own senses or professional abilities to detect alcohol are an important element of OWI enforcement.*
- *Good law enforcement practices include use of tools such as field sobriety testing.*

- *Devices would probably be used on an infrequent basis; the officer's own senses are usually sufficient for reasonable suspicion and probable cause.*

- *Devices are considered only as an "extension of the officer's nose."*

- *Used not as the primary method to determine alcohol use, but as a tool to assist in confirming officer's suspicions.*

- *Cannot be used to determine if violator is impaired.*

- *A simple detection of alcohol does not measure impairment; further testing by field sobriety procedures and officer observations is required.*

- *Deterrent for driving after drinking or driving while impaired.*

- *Used as an informational and educational/prevention tool for the public;*

  Used as part of a media campaign to prevent OWI.

  Suggested that use of passive alcohol sensors in Milwaukee helped to reduce the number of alcohol-related crashes in the early 1990's.

  Use of the devices are passed throughout a community by "word of mouth" indicating that any flashlight may be a passive alcohol sensor.

  Good public reminder of local traffic enforcement and OWI efforts.

- *Assistance in crash investigations*

  Useful tool when officer is unable to use other devices (e.g. preliminary breath tester – PBT) on a crash victim due to person's injuries.

  Detection of alcohol from a "safe distance" from an injured and possibly dangerous individual (e.g. avoid bodily fluids).

- *Determine alcohol when other odors are present that mask the odor of alcohol – PADS may be useful when other odors, such as body odors (e.g. uncleanliness, medical condition), prohibit the officer from being able to smell alcohol on the violator.*

- *Enforcement of absolute sobriety laws.*

  Determination of any alcohol use for teens/underage persons, commercial drivers, and repeat offenders.

Not currently authorized for use by State Patrol personnel when stopping commercial drivers

- *Adherence to "good law enforcement practices."*

  Technology should not be allowed to determine how and under what circumstances a passive alcohol sensor is used.

  Good law enforcement practices involve proper training, polices and procedures, and good public relations.

Effectiveness of Passive Alcohol Sensors

- *Not necessarily as cost effective as other tools, but agencies should be permitted "to keep their options open."*

  Not as cost effective as Intoximeters (or other quantitative breath test instruments) or PBT's (portable breath testers).

  Do not *ban* the use of passive alcohol sensors.

  There are some instances when the devices may be useful.

  Decision of "cost effectiveness" should be left up to each individual law enforcement agency and community.

  Not economical to have a device in every vehicle or for every officer.

- *Effectiveness depends upon the individual community and law enforcement agency using the device; agencies have different enforcement environments*

- *Passive alcohol sensors can provide a "perception of enforcement," such a officer uniforms and marked law enforcement vehicles which indicate to the general public that there is a "police presence."*

- *Passive alcohol sensors are not as well accepted as other more traditional and technologically advanced tools used by law enforcement (e.g. drug sniffing dogs, thermal imaging devices).*

- *Passive alcohol sensors are not as intrusive as other tools such as Intoximeters and PBT's that require actual contact with the device.*

- *May use the device on a second approach to the vehicle to confirm personal suspicion.*

Reliability of Passive Alcohol Sensors

- *Mixed responses regarding the reliability/accuracy of the devices currently used by law enforcement.*

  Some agencies state the devices are "good" or useful.

  Some agencies stated that they no longer used the devices due to inaccurate readings.

  Officers using the device have outperformed officers without the device "on a 2-1 basis."

  Uncertainty if the readings displayed by the devices were accurate.

  Problems with using the devices incorrectly, such as after using a cleansing alcohol-based hand gel which can result in false readings.

  Use of devices discontinued because they did not add any "value" to the traffic stop.

- ***Problems caused by the environment when using the devices can affect accuracy.*** Snowmobile OWI enforcement (i.e. Department of Natural Resources officers) creates additional problems related to excessive wind and cold and violators' helmets which restrict the ambient alcohol. Boat OWI enforcement is hampered by wind and gasoline fumes that can affect accurate readings. Wind creates problems with ambient air for many highway OWI stops.

- ***More technical information and documentation of the devices are required to make determination of the accuracy of the devices.*** Results of more testing is required before law enforcement agencies would endorse use of the device.

Practicality of the use of Passive Alcohol Sensors

- *Readings are not often accurate so they are not practical to use.*

- *Officer may need two flashlights if one is used as a passive alcohol sensor and one is used as an actual flashlight; low light displayed from passive alcohol sensor/flashlight.*

- *Another tool to carry on officer's belt.*

- *Officers want to focus on violator's behavior, not the reading of a passive alcohol sensor.*

- *Officer safety limitations – devices that may be used close to the violator's face may be grabbed by the violator and used as a weapon against the officer or other persons.*

- *Flashlights are not routinely used in daylight, creating confusion for the violator if the passive alcohol sensor/flashlight is used during a daytime stop.*

- *As a result of publicity, some drivers may not roll down their windows at a traffic stop for fear of the passive alcohol sensor use.*

- *Carrying a passive alcohol sensor/clipboard may be cumbersome at traffic stops.*

- *Training on use is vital.*

- *May be too costly when considered during times of budget constraints and need for other tools.*

Legal Concerns and Privacy Issues

- *4th Amendment and Plain View doctrine.*

  Law enforcement should "have no problem" using the devices as long as they are used within the legal rules of probable cause and reasonable suspicion.

  The devices are considered "an extension of the officer's own senses" similar to the use of binoculars.

  Officers must receive proper training on using the device within the limits of the law.

  Public must understand the need for the devices as a tool for OWI enforcement.

  The devices have never been contested in court (for one law enforcement agency that uses the devices on a routine basis).

- *The readings from a passive alcohol sensor and the relationship to legal evidence.*

  OWI arrests are not made solely on the basis of a reading from a passive alcohol sensor.

Results from the device are not admissible in court but are used as one indicator of alcohol use.

Nature of the evidence does not change when a device is used; alcohol that is present may be sensed, but it is not changed.

- *Concern with "covert" nature of passive alcohol sensors.*

  Parents view use of the devices on juveniles to be "sneaky."

  Important to deal with the public on a professional level, and the use of the devices may compromise that standard..

  Covert nature of the passive alcohol sensor may betray public trust in law enforcement.

  Deceptive tactics create problems over time and result in poor public relations.

  Law enforcement use is not "sneaky" if officer informs violator of the device. Beforehand.

  Law enforcement should adopt policies of informing the violator when the device is to be used.

  Not all the devices are covert, or disguised as another device or tool; some are obvious to the violator as a tool used by the officer.

Probable cause and the Wisconsin Legislature

- *Passive alcohol sensors are effective only if probable cause exists.*

- *Training on the proper use of and when to use the devices is paramount for law enforcement agencies.*

- *Wisconsin legislature is interested in when the devices would be used.*

- *Legislature will likely have fewer issues if it is clearly indicated that the devices are used only after probably cause has been identified.*

- *Legislature may ban devices if they believe law enforcement will use them in a deceptive manner.*

- *Legislature must be better informed as to how and devices actually work and when they would be used during the entire procedure of an OWI traffic stop.*

Trial Use and Guidelines

- *State legislature should consider requiring a trial phase for use of the devices involving a selected number of law enforcement agencies and requiring the collection of data on the use and accuracy of the devices.*

- *Guidelines and training should be developed for all law enforcement agencies on the proper use of devices.*

- *Banning the use of the devices "altogether" would not permit technology the chance to prove their usefulness or to improve the devices*

Marketing Passive Alcohol Sensors in Wisconsin

- *There is often a big "sales push" by vendors to sell the devices on a trial or "rent to own" basis; some law enforcement agencies do not succumb to the pressure.*

- *Use of the devices in another state makes it easier to sell the devices in Wisconsin.*

- *The courts in some areas have been supportive of advances in technology as long as the officers are "up front" informing citizens of their use.*

- *Officers must be trained on using the devices, including their legal responsibilities, not only encouraged to purchase them.*

Other Law Enforcement Concerns

- *Training to ensure correct us of the devices is essential.*

- *Legal requirements including the plain view doctrine, probable cause, and overall OWI stop procedures.*

- *Training maintains professional standards.*

- *Modifications to the existing devices may make them more useful to law enforcement.*

- *Provide larger buttons to facilitate use when an officer is wearing gloves.*

- *Mounting bracket in law enforcement vehicle for easier storing when device is not in use.*

- *More efficient re-charging device (instead of batteries).*

- *More options for "overt" devices (not designed to look like flashlights or clipboards)*

Final Comments

- *Would not use devices generally, though they may be useful in some circumstances.*
- *Concern with deception of "covert" devices.*
- *Need to educate legislature on the devices and their use.*
- *Total endorsement as a tool to reduce OWI.*
- *Officers must have adequate training and guidelines.*
- *Community must dictate use of the devices.*
- *Devices should be available to those who want to use them, in whatever capacity.*
- *Some modifications to current devices are necessary.*
- *More information is needed on the devices to make any decisions.*
- *Opposition to blanket ban of the devices in Wisconsin Department of Transportation*

LAW ENFORCEMENT FOCUS GROUP
List of Participants

Wednesday, September 4, 2002
12:30pm – 2:30pm
Wisconsin State Patrol District 3 HQ
Fond Du Lac

1) Chief Doug Pettit, Oregon P.D.

2) Sgt. Pattie Pautz, State Patrol District 4, Wausau

3) Warden Karl Brooks, DNR, Madison

4) Sgt. Larry Peronne, Manitowoc P.D.

5) Officer Scott Neimi, Elkhart Lake P.D.

6) Sgt. Gordon Disch, Dane Co. S.O.

7) Capt. Ken Berg, Eau Claire Co. S.O.

8) Officer Stewart Ballweg, UW-Madison P.D.

9) Asst. Chief Noble Wray, Madison P.D.

10) Mr. Terry Witkowski, Blue Sky Consulting, Milwaukee

Moderators: John Nordbo/Janet Hauke (WisDOT-OODS)

Observers: Loralee Brumund (WisDOT – DSP), Susan Hackworthy (WisDOT-DSP) and Tim McClain (WisDOT-BOTS)

PASSIVE ALCOHOL SENSORS - Questions for Law Enforcement Community

1. What are some appropriate uses of passive alcohol sensors for traffic enforcement (e.g., OWI enforcement, open intoxicants in motor vehicles, commercial motor vehicle drivers)?

2. What would be considered *inappropriate* use of these devices?

3. When used during a traffic stop, how accurate are passive alcohol sensors? In other words, how well does the device provide an accurate indicator that the driver has alcohol on her/his breath?

4. (I realize that some of you have used one of these devices and others have not, but for those who have), how effective are passive alcohol sensors compared with other tools or techniques used by law enforcement officers in determining a possible OWI violation?

Law enforcement officers currently use preliminary breath test devices (PBTs) which require a subject to blow into a mouthpiece to test for the presence of alcohol, and the subject is aware that the officer is requesting a breath sample for testing. In comparison, not all passive alcohol sensors are so obvious and may not be readily identifiable by the subject as a breath test device.

5. What difficulties does this (or could this) create for the officer in using the passive alcohol sensor?

6. What are the benefits and problems with using a passive alcohol sensor at traffic stops?
   - use at the scene of the stop
   - how the device fits on the officer's belt
   - cost of the device relative to its use (as an additional tool)?
   - use of the device relative to the training requirements for a safe traffic stop?

7. How has the marketing of passive alcohol sensors influenced your opinion of them?

8. What impact do you think passive alcohol sensors do (or could) have on the enforcement of impaired driving laws?

9. How do passive alcohol sensors compare to Preliminary Breath Test devices (PBTs) for use in detecting breath alcohol during a traffic stop?

10. Is there anything we have missed or is there anything anyone would like to add to the discussion?

11. One final question – if, when you leave this room, you were to see an old friend in the hall, and they ask you if Passive Alcohol Sensors should be used for OWI law enforcement, what would you tell them. (Yes or no)